

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Stephen Collins,

Case No. 21-cv-0429 (WMW/DTS)

Petitioner,

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

v.

U.S.A.,

Respondent.

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Before the Court is the July 30, 2021 Amended Report and Recommendation (R&R) of United States Magistrate Judge David T. Schultz. (Dkt. 43.) No objections to the R&R have been filed. In the absence of timely objections, this Court reviews an R&R for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Having reviewed the R&R, the Court finds no clear error.

Based on the R&R, the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The July 30, 2021 R&R, (Dkt. 43), is **ADOPTED**.
2. Petitioner Stephen Collins's petition for a writ of habeas corpus, (Dkt. 1), is

**DISMISSED WITHOUT PREJUDICE.**<sup>1</sup>

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<sup>1</sup> Habeas cases are not "civil actions" within the meaning of 28 U.S.C. § 1915. *See, e.g., Andrews v. King*, 398 F.3d 1113, 1122 (9th Cir. 2005) (stating that "the language of § 1915(g) does not encompass habeas petitions and . . . Congress intended § 1915(g) to address civil rights and prison condition cases, not habeas petitions"). Because the Court is not dismissing Collins's habeas petition for a reason enumerated in Section 1915(g), the dismissal is not a "strike" even if construed as a "civil action." *See* 28 U.S.C. § 1915(g).

3. Petitioner Stephen Collins's motions for summary judgement, (Dkts. 21, 40), are **DENIED AS MOOT**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 29, 2021

s/Wilhelmina M. Wright  
Wilhelmina M. Wright  
United States District Judge